

REMARKS

In response to the above Office Action and the rejection of claims 20-22 and 24 under 35 U.S.C. § 102, second paragraph, claim 20 has been amended as suggested. Withdrawal of the rejection is therefor requested.

The indicated allowance of claims 28, 30 and 31 is appreciated. Now that claim 28 has been allowed, it is believed withdrawn claim 29, dependent from claim 28, should also now be allowable. Thus it is believed the allowed claims are claims 28-31. Though the Examiner indicated in the Office Action Summary that the claims were "objected to," it is assumed this was in error and that they should have been indicated to be "allowed."

Regarding the continued rejection of claims 1-5, 7, 8, 12, 15, 18-24 and 26 for being obvious over DeSchutter in view of Formo, it is believed the Examiner has not fully appreciated all of the significant differences between the claimed invention and that of the prior art. Further, that if these differences were appreciated, the Examiner would see that the claimed invention is not obvious from the cited combination of references.

In this regard, Applicants are filing simultaneously herewith an actual sample of a preferred cutlery set assembly according to the invention as an exhibit under the provisions of Rule 1.91. Consequently, it would be appreciated if the Examiner would make sure that he considers this sample before further considering the patentability of the claimed invention.

With respect to the cutlery set assembly of claims 1-5, 7, 8, 12, 15, 18, 19, 23, 24 and 26 as can be seen from this sample and as set forth in independent claim 1, the cutlery set assembly has, inter alia, the following features:

1. each item of cutlery of said at least two items has a cylindrical handle, one of the items being a knife;

2. the handles of the items are shaped such that they can be nested within each other; and

3. when nested, the handle of the first outermost item extends more than half way around the handle of the second item to grasp the second item and hold the items together in firm engagement in the nested condition. Support for the limitation that the items are held together "in firm engagement" in the nested condition can be found on page 5, line 29 and page 11, line 4 of the specification.

Claim 23 is similar, but here the cutlery set is limited to three items.

None of these features are shown in either of DeSchutter or Formo, alone or in combination.

With regard to DeSchutter, reference is made to the attached Exhibit A which shows the cross section at various locations A-E of the knife of Fig. 3 of the reference.

Referring to DeSchutter, column 2, lines 22-34, it is shown in Exhibit A that:

Cross sectional view A - The handle assumes a U-contour of which the two legs 14 and 16 subtend obtuse angles with its top wall portion.

Cross sectional views B-E - "The legs 14 and 16 extend, 24, 26, through the transition zones to the operative portion 10 [...] gradually taper[ing] and merg[ing] into the edge of the operative portion in such manner that the cutlery items of the same kind when stacked not only overlap in the handle zone but also in the zone of the leg extensions 24 and 26 and thereby produce high stacking stability."

Attached Exhibit B shows the cross section at various locations A-D of the knife of the present invention. Referring to the specification, page 9, lines 22-28, Exhibit B shows:

Cross sectional views A-C - A hollow cylindrical handle and a rib that extends centrally along the length of the knife handle on an inner curved surface thereof. As the Examiner can see, the "arms" of the cylindrical handle curve round towards each other.

Cross sectional view D - The handle tapers towards the leading end and the blade is exposed.

It is clear from these cross sectional views that the concept of the cutlery in DeSchutter is completely different to that in the present application and that these differences are clearly set forth in the claims.

For one, the handles of the knives of DeSchutter are not "cylindrical."

Secondly, in DeSchutter, the identical items of cutlery are merely stackable by virtue of the shape of their handles. The top surface of the knife handle lies in the same plane as the blade. The legs which protrude from both edges of the handle at an obtuse angle allow the knives to be stacked.

However, there is nothing in the shape of the cutlery items in DeSchutter to hold them together in firm engagement as a set, the items being easily separable, without application of force, unless an external aid, such as a tape, is used to hold the items together. The items may be considered to be "nested" with each other, but just because the shape of the handles makes them stackable or nested, does not mean they are "held together in firm engagement "in that condition.

As the Examiner will readily see from Figures 1 and 4 of the present application, the cutlery items in the present invention nest to become a unitary and compact cutlery set where the items of cutlery are held together in firm engagement by their shape.

For example, where a fork has a handle of slightly smaller diameter than the handle of a spoon, the handle of the fork can nest inside the handle of the spoon by being slid into place. The handle of the fork is then held in firm engagement inside the handle of the spoon.

Preferably both the spoon and fork handle have a longitudinal slit, in order to enable the blade and the rib of the knife to be positioned inside the handles of the spoon and fork.

This is also demonstrated in the sample of a preferred cutlery set assembly submitted under Rule 1.91. As the Examiner can see, when the cutlery set is complete, the blade of the knife is positioned in the bowl of the spoon and the fork, and the rib of the knife is positioned in the aligned longitudinal slits of the spoon and fork handles. The rib of the knife can be slid inside the longitudinal slit in the handles of the fork and the spoon, or the handle of the knife can be “snapped” onto the handle of the outer cutlery item. As can be seen in the cross section views A and B in Exhibit B, the “arms” of the cylindrical handle of the knife curve back towards each other. This enables the handle of the knife to firmly hold the handle of the spoon.

The firm grip the knife handle has on the adjacent spoon handle means that the knife cannot simply be lifted away from the other cutlery items as in the references, but must either be pulled or “snapped” off, or slid out from, the remaining items of cutlery.

Similarly, the fork must be slid out of the spoon, due to the firm grip the spoon handle has on the adjacent fork handle.

The Examiner will appreciate that the cutlery set should not be limited to having a spoon, a fork and a knife. It is, for example, within the scope of the invention that a) a knife and fork only, b) a knife and spoon only, c) a large spoon, a small spoon and a knife, or d) other combinations of cutlery, can be provided.

Formo is essentially no different than DeSchutter. It may show a set of a knife fork and spoon as items of cutlery, but the items are merely stackable as shown in Fig. 3. Not only are the handles of the items not “circular” as claimed, but the handles do not hold the stacked items in firm engagement in a nested condition. Like DeSchutter, the items are easily separable, without application of force, unless an external aid, such as a tape, is used to hold the items together. There is no teaching in Formo, that the knife 16, for example, holds it and the fork 14 and spoon 12 in tight engagement in a nested or stacked condition. In fact, the cutlery handles in Formo even comprise lugs on their inner surface, to support the stacked cutlery. These lugs further show that the cutlery items are not held together in tight engagement.

The Examiner argues on page 9, lines 1 and 2 of the Office Action that the prior art device, presumably either DeSchutter or Formo, “performs the function of holding cutlery together” merely because they are “stackable.” While Applicants disagree, the claims now recite that the items are held together “in firm engagement” to clarify what is meant by “held together.” Clearly the items of the references are not held together “in firm engagement” when they are stacked as shown in the references.

In summary, neither DeSchutter nor Formo alone or in combination teach a cutlery set assembly where the items of cutlery are nested and the circular handle of an outermost item extends more than half way around and grips the circular handle of an inner item, such that the items are "held together in firm engagement in the nested condition." In both DeSchutter (when no external aid to fix the items in the stack together is present) and Formo, the items of cutlery can be readily lifted off one another. No force is needed to separate the cutlery items from each other, because they do not hold each other together in firm engagement, as in the present invention.

Accordingly, it is not believed that claim 1 or claims 2-5, 7, 8, 12, 15, 18, 19 and 26 dependent therefrom as well as claim 23 and claim 24 dependent therefrom are obvious over the teachings of DeSchutter in view of Formo.

With respect to claim 20, DeSchutter does not teach a knife having "a cylindrical handle" or "a rib forming a continuation of the blade, the rib being joined to the inner surface of the hollow handle and extending from the blade of the knife centrally along the inner surface of the hollow handle" as set forth in the claim. As the Examiner is able to see from the enclosed sample, the rib of the knife not only gives strength and rigidity to the blade of the knife (page 10, lines 1-2), but also holds the cutlery set assembly together as a set when it fits into the slits running along the length of the handles of the other items of cutlery. Other differences are noted on pages 12-13 of the Reply filed June 9, 2009 and they are incorporated hereby reference.

In any event, since MPEP § 2143.03 requires that "all words in a claim must be considered in judging the patentability of that claim against the prior art" and that "all the claimed elements" must have been known in the prior art, and neither of the above two

features are disclosed in DeSchutter, that neither this claim nor claims 21-22 dependent therefrom can be considered obvious over this reference.

Withdrawal of the grounds of rejection of claims 1-5, 7, 8, 12, 15, 18-24 and 26 under §103(a) and their allowance is therefore requested. If claim 1 is allowable then it is requested that withdrawn claims 9, 13, 14, 16 and 17 be reinstated in the case as they all depend directly or indirectly from claim 1.

In view of the foregoing remarks, Applicant submits that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant, therefore, requests the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

If the Examiner believes the cutlery set assembly and/or knife are not obvious over the cited references, but further limitations are required to support this, he is requested to contact the undersigned to discuss these limitations.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 22, 2009

By: 

Arthur S. Garrett
Reg. No. 20,338
(202) 408-4091



